

EXHIBIT 6

Docket No.: **KFX.003C1**

Customer No. 20995

INFORMATION DISCLOSURE STATEMENT

Applicant	:	Michael L. Green et al.
App. No.	:	13/245620
Filed	:	September 26, 2011
For	:	SYSTEM AND METHOD FOR ATTACHING SOFT TISSUE TO BONE
Examiner	:	Gregory A. Anderson
Art Unit	:	3773
Conf. No.	:	9919

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed is a PTO/SB/08 Equivalent listing **201 references**. References numbered 1-87, 89-98, 100-109, 114-141, 143-149, 151-157, 159-160, 162-166, 168-169, 171-182, 185-190, 194, and 200 are of record in U.S. patent application No. 12/549,105, filed August 27, 2009, which is relied upon for an earlier filing date under 35 U.S.C. § 120. Accordingly, copies of references numbered 88, 99, 110-113, 142, 150, 158, 161, and 167 are not submitted pursuant to 37 C.F.R. § 1.98(d).

This Information Disclosure Statement is being filed before the receipt of a first Office Action on the merits, and presumably no fee is required. If a first Office Action on the merits was mailed before the mailing date of this Statement, the Commissioner is authorized to charge the fee set forth in 37 C.F.R. § 1.17(p) to Deposit Account No. 11-1410.

Application No.: 13/245620
Filing Date: September 26, 2011

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 1, 2011

By: Ryan E. Melnick
Ryan E. Melnick
Registration No. 58,621
Attorney of Record
Customer No. 20995
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PTO/SB/08 Equivalent

INFORMATION DISCLOSURE STATEMENT BY APPLICANT	Application No.	13/245620
	Filing Date	09-26-2011
	First Named Inventor	Green, Michael L. et al
	Art Unit	3773
(Multiple sheets used when necessary)	Examiner	Gregory A. Anderson
SHEET 1 OF 8	Attorney Docket No.	KFX.003C1

U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear
	1	3,623,192	11-30-1971	Button	
	2	4,210,148	07-01-1980	Stivala	
	3	4,532,926	08-06-1985	O'Holla	
	4	4,796,612	01-10-1989	Reese	
	5	4,898,156	02-06-1990	Gattorna et al.	
	6	5,013,316	05-07-1991	Goble et al.	
	7	5,192,303	03-09-1993	Gattorna et al.	
	8	5,219,359	06-15-1993	McQuilkin et al.	
	9	5,224,946	07-06-1993	Hayhurst et al.	
	10	5,269,784	12-14-1993	Mast	
	11	5,336,240	08-09-1994	Metzler et al.	
	12	5,372,604	12-13-1994	Trott	
	13	5,417,712	05-23-1995	Whittaker et al.	
	14	5,423,858	06-13-1995	Bolanos et al.	
	15	5,423,860	06-13-1995	Lizardi et al.	
	16	5,472,452	12-05-1995	Trott	
	17	5,478,353	12-26-1995	Yoon	
	18	5,500,001	03-19-1996	Trott	
	19	5,527,341	06-18-1996	Gogolewski et al.	
	20	5,527,343	06-18-1996	Bonutti	
	21	5,543,012	08-06-1996	Watson et al.	
	22	5,545,180	08-13-1996	Le et al.	
	23	5,569,306	10-29-1996	Thal	
	24	5,575,801	11-19-1996	Habermeyer et al.	
	25	5,578,057	11-26-1996	Wenstrom, Jr.	
	26	5,584,835	12-17-1996	Greenfield	
	27	5,591,207	01-07-1997	Coleman	
	28	5,634,926	06-03-1997	Jobe	
	29	5,683,419	11-04-1997	Thal	

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PTO/SB/08 Equivalent

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U.S. PATENT DOCUMENTS					
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	30	5,690,676	11-25-1997	DiPoto et al.	
	31	5,697,950	12-16-1997	Fucci et al.	
	32	5,720,765	02-24-1998	Thal	
	33	5,725,557	03-10-1998	Gattuma	
	34	5,769,894	06-23-1998	Ferragamo	
	35	5,800,436	09-01-1998	Lerch	
	36	5,814,072	09-29-1998	Bonutti	
	37	5,891,168	04-06-1999	Thal	
	38	5,948,001	09-07-1999	Larsen	
	39	5,948,002	09-07-1999	Bonutti	
	40	5,951,590	09-14-1999	Goldfarb	
	41	5,964,769	10-12-1999	Wagner et al.	
	42	6,010,525	01-04-2000	Bonutti et al.	
	43	6,013,077	01-11-2000	Harwin	
	44	6,013,083	01-11-2000	Bennett	
	45	6,027,523	02-22-2000	Schmieding	
	46	6,045,573	04-04-2000	Wenstrom, Jr. et al.	
	47	6,056,751	05-02-2000	Fenton, Jr.	
	48	6,063,106	05-16-2000	Gibson	
	49	6,093,201	07-25-2000	Cooper et al.	
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	51	6,099,547	08-08-2000	Gellman et al.	
	52	6,110,207	08-29-2000	Eichhorn et al.	
	53	6,117,160	09-12-2000	Bonutti	
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	56	6,149,669	11-21-2000	Li	
	57	6,200,330 B1	03-13-2001	Benderev et al.	
	58	6,241,749 B1	06-05-2001	Rayhanabad	

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	59	6,245,082 B1	06-12-2001	Gellman et al.	
	60	6,280,474 B1	08-28-2001	Cassidy et al.	
	61	6,293,961 B2	09-25-2001	Schwartz et al.	
	62	6,296,659 B1	10-02-2001	Foerster	
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	64	6,319,271 B1	11-20-2001	Schwartz et al.	
	65	6,328,758 B1	12-11-2001	Tornier et al.	
	66	6,391,030 B1	05-21-2002	Wagner et al.	
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	68	6,432,123 B1	08-13-2002	Schwartz et al.	
	69	6,464,713 B2	10-15-2002	Bonutti	
	70	6,491,714 B1	12-10-2002	Bennett	
	71	6,514,274 B1	02-04-2003	Boucher et al.	
	72	6,518,200 B2	02-11-2003	Lin	
	73	6,520,980 B1	02-18-2003	Foerster	
	74	6,524,317 B1	02-25-2003	Ritchart et al.	
	75	6,527,794 B1	03-04-2003	McDevitt et al.	
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	78	6,547,800 B2	04-15-2003	Foerster et al.	
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	86	6,635,073 B2	10-21-2003	Bonutti	
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	89	6,652,561 B1	11-25-2003	Tran	
	90	6,660,008 B1	12-09-2003	Foerster et al.	
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	92	6,673,094 B1	01-06-2004	McDevitt et al.	
	93	6,712,830 B2	03-30-2004	Esplin	
	94	6,770,076 B2	08-03-2004	Foerster	
	95	6,780,198 B1	08-24-2004	Gregoire et al.	
	96	6,855,157 B2	02-15-2005	Foerster et al.	
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	99	7,001,411 B1	02-21-2006	Dean	
	100	7,041,120 B2	05-09-2006	Li et al.	
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	105	7,144,415 B2	12-05-2006	Del Rio et al.	
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	113	8,029,537 B2	10-04-2011	West, Jr. et al.	
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(Multiple sheets used when necessary)	Examiner	Gregory A. Anderson
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	124	2002/0169478 A1	11-14-2002	Schwartz et al.	
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	127	2003/0088270 A1	05-08-2003	Lubbers et al.	
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	132	2003/0191498 A1	10-09-2003	Foerster et al.	
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	139	2004/0024420 A1	02-05-2004	Lubbers et al.	
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	142	2004/0093031 A1	05-13-2004	Burkhart et al.	
	143	2004/0116961 A1	06-17-2004	Nesper et al.	
	144	2004/0133238 A1	07-08-2004	Cerier	
	145	2004/0193217 A1	09-30-2004	Lubbers et al.	

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	146	2004/0225325 A1	11-11-2004	Bonutti	
	147	2004/0243178 A1	12-02-2004	Haut et al.	
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	151	2005/0027307 A1	02-03-2005	Schwartz et al.	
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	158	2006/0067967 A1	03-30-2006	Bowman et al.	
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	162	2006/0178702 A1	08-10-2006	Pierce et al.	
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	165	2006/0271105 A1	11-30-2006	Foerster et al.	
	166	2006/0293710 A1	12-28-2006	Foerster et al.	
	167	2007/0142835 A1	06-21-2007	Green et al.	
	168	2007/0142861 A1	06-21-2007	Burkhart	

FOREIGN PATENT DOCUMENTS						
Examiner Initials	Cite No.	Foreign Patent Document Country Code-Number-Kind Code Example: JP 1234567 A1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear	T ¹
	169	SU 1600713	10-23-1990	Don Med Inst.		
	170	WO 1999/052478 A1	10-21-1999	Axya Medical, Inc.		

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	172	WO 2001/067962 A2	09-20-2001	Rosch		
	173	WO 2002/011630 A1	02-14-2002	The Cleveland Clinic Foundation		
	174	WO 2002/021998 A1	03-31-2002	Axya Medical Inc.		
	175	WO 2003/065904 A1	08-14-2003	Opus Medical, Inc.		
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	178	WO 2005/112788 A2	12-01-2005	Arthrocare Corporation		
	179	WO 2006/060035 A2	06-08-2006	3I Medical Corporation		
	180	WO 2006/067548 A1	06-29-2006	Arthrex, Inc.		
	181	WO 2006/128092 A2	11-30-2006	Arthrocare Corporation		
	182	WO 2007/084714 A2	07-26-2007	Kim		

NON PATENT LITERATURE DOCUMENTS				
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ¹	
	183	Arthrex, Inc.'s Answer to Plaintiff KFX Medical Corp.'s complaint For Patent Infringement and Counterclaims, United States District Court , Southern District of California, September 23, 2011, Los Angeles, USA.		
	184	Complaint for Patent Infringement, dated August 1, 2011, KFX Medical Corporation v. Arthrex; Inc., (S.D.C.A.).		
	185	International Preliminary Report on Patentability dated January 25, 2007 for International Application No. PCT/US2005/019454.		
	186	International Search Report and Written Opinion of the International Searching Authority, dated September 6, 2006, for International Application No. PCT/US2005/019454.		
	187	LO et al., "Double-Row Arthroscopic Rotator Cuff Repair: Re-Establishing the Footprint of the Rotator Cuff, Arthroscopy: The Journal of Arthroscopic and Related Surgery, November, 2003, pgs. 1035-1042, Vol. 19, No. 9.		
	188	MAZZOCCA et al., Arthroscopic Single-Row Versus Double-Row Suture Anchor Rotator Cuff Repair," The American Journal of Sports Medicine, 2005, 33:1861.		
	189	MAZZOCCA et al., Arthroscopic Single versus Double Row Suture Anchor Rotator Cuff Repair, abstract of presentation made on June 25, 2004 at 2004 Annual Meeting of the American Orthopaedic Society for Sports Medicine in Quebec, Canada, publication date unknown.		
	190	MILLETT et al., Mattress double anchor footprint repair: a novel, arthroscopic rotator cuff repair technique, Arthroscopy: The Journal of Arthroscopic and Related Surgery, 20(8):875-879 (2004).		

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	Examiner	Gregory A. Anderson
SHEET 8 OF 8	Attorney Docket No.	KFX.003C1

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ¹
	191	PAULOS, M.D., Graftjacket Regenerative Tissue Matrix Rotator Cuff, date unknown, Wright Medical Technology, Inc.; Wright Cremascoli Ortho SA.	
	192	PCT International Preliminary Report on Patentability, dated May 22, 2009, for International Application No. PCT/US2007/083662.	
	193	PCT International Search Report and Written Opinion, dated August 8, 2008, for International Application No. PCT/US2007/083662.	
	194	PCT Invitation to Pay Additional Fees, dated May 13, 2008, for International Application No. PCT/US2007/083662.	
	195	ROBBE, M.D. et al., Knotless Suture-based Anchors, Operative Techniques in Sports Medicine, 2004, pgs. 221-224, Elsevier Inc.	
	196	SELDES, M.D., et al., Tissue Mend Arthroscopic Insertion of a Biologic Rotator Cuff Tissue Augment After Rotator Cuff Repair, Stryker, date unknown, pgs. 1-7.	
	197	Statement of Tate Scott, dated April 12, 2011, submitted in Re-Examination No. 90/011,430.	
	198	TissueMend Advanced Soft Tissue Repair Matrix, Stryker, date unknown.	
	199	TissueMend Soft Tissue Repair Matrix, Stryker, 2004, USA.	
	200	WALTRIP, "Rotator Cuff Repair A Biomechanical Comparison of Three Techniques", The American Journal of Sports Medicine, 2003, pgs. 493-497, No. 4.	
	201	YIAN, M.D., et al., Arthroscopic Repair of SLAP Lesions With a Bioknotless Suture Anchor, Arthroscopy: The Journal of Arthroscopic and Related Surgery, May-June 2004, pgs. 547-551, Vol. 20, No. 5. Arthroscopy Association of North America.	

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EXHIBIT 7

Docket No.: **KFX.003C2**

Customer No. 20995

INFORMATION DISCLOSURE STATEMENT

Applicant	:	Michael L. Green et al.
App. No.	:	13/245622
Filed	:	September 26, 2011
For	:	SYSTEM AND METHOD FOR ATTACHING SOFT TISSUE TO BONE
Examiner	:	Gregory A. Anderson
Art Unit	:	3773
Conf. No.	:	8012

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed is a PTO/SB/08 Equivalent listing **201 references**. References numbered 1-87, 89-98, 100-109, 114-141, 143-149, 151-157, 159-160, 162-166, 168-169, 171-182, 185-190, 194, and 200 are of record in U.S. patent application No. 12/549,105, filed August 27, 2009, which is relied upon for an earlier filing date under 35 U.S.C. § 120. Accordingly, copies of references numbered 88, 99, 110-113, 142, 150, 158, 161, and 167 are not submitted pursuant to 37 C.F.R. § 1.98(d).

This Information Disclosure Statement is being filed before the receipt of a first Office Action on the merits, and presumably no fee is required. If a first Office Action on the merits was mailed before the mailing date of this Statement, the Commissioner is authorized to charge the fee set forth in 37 C.F.R. § 1.17(p) to Deposit Account No. 11-1410.

Application No.: 13/245622
Filing Date: September 26, 2011

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 1, 2011

By: Ryan Melnick
Ryan E. Melnick
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PTO/SB/08 Equivalent

INFORMATION DISCLOSURE STATEMENT BY APPLICANT	Application No.	13/245622
	Filing Date	09-26-2011
	First Named Inventor	Green, Michael L. et al
	Art Unit	3773
(Multiple sheets used when necessary)	Examiner	Gregory A. Anderson
SHEET 1 OF 8	Attorney Docket No.	KFX.003C2

U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear
	1	3,623,192	11-30-1971	Button	
	2	4,210,148	07-01-1980	Stivala	
	3	4,532,926	08-06-1985	O'Holla	
	4	4,796,612	01-10-1989	Reese	
	5	4,898,156	02-06-1990	Gattorna et al.	
	6	5,013,316	05-07-1991	Goble et al.	
	7	5,192,303	03-09-1993	Gattorna et al.	
	8	5,219,359	06-15-1993	McQuilkin et al.	
	9	5,224,946	07-06-1993	Hayhurst et al.	
	10	5,269,784	12-14-1993	Mast	
	11	5,336,240	08-09-1994	Metzler et al.	
	12	5,372,604	12-13-1994	Trott	
	13	5,417,712	05-23-1995	Whittaker et al.	
	14	5,423,858	06-13-1995	Bolanos et al.	
	15	5,423,860	06-13-1995	Lizardi et al.	
	16	5,472,452	12-05-1995	Trott	
	17	5,478,353	12-26-1995	Yoon	
	18	5,500,001	03-19-1996	Trott	
	19	5,527,341	06-18-1996	Gogolewski et al.	
	20	5,527,343	06-18-1996	Bonutti	
	21	5,543,012	08-06-1996	Watson et al.	
	22	5,545,180	08-13-1996	Le et al.	
	23	5,569,306	10-29-1996	Thal	
	24	5,575,801	11-19-1996	Habermeyer et al.	
	25	5,578,057	11-26-1996	Wenstrom, Jr.	
	26	5,584,835	12-17-1996	Greenfield	
	27	5,591,207	01-07-1997	Coleman	
	28	5,634,926	06-03-1997	Jobe	
	29	5,683,419	11-04-1997	Thal	

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PTO/SB/08 Equivalent

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	Examiner	Gregory A. Anderson
SHEET 2 OF 8	Attorney Docket No.	KFX.003C2

U.S. PATENT DOCUMENTS					
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	30	5,690,676	11-25-1997	DiPoto et al.	
	31	5,697,950	12-16-1997	Fucci et al.	
	32	5,720,765	02-24-1998	Thal	
	33	5,725,557	03-10-1998	Gattorna	
	34	5,769,894	06-23-1998	Ferragamo	
	35	5,800,436	09-01-1998	Lerch	
	36	5,814,072	09-29-1998	Bonutti	
	37	5,891,168	04-06-1999	Thal	
	38	5,948,001	09-07-1999	Larsen	
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	40	5,951,590	09-14-1999	Goldfarb	
	41	5,964,769	10-12-1999	Wagner et al.	
	42	6,010,525	01-04-2000	Bonutti et al.	
	43	6,013,077	01-11-2000	Harwin	
	44	6,013,083	01-11-2000	Bennett	
	45	6,027,523	02-22-2000	Schmieding	
	46	6,045,573	04-04-2000	Wenstrom, Jr. et al.	
	47	6,056,751	05-02-2000	Fenton, Jr.	
	48	6,063,106	05-16-2000	Gibson	
	49	6,093,201	07-25-2000	Cooper et al.	
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	51	6,099,547	08-08-2000	Gellman et al.	
	52	6,110,207	08-29-2000	Eichhorn et al.	
	53	6,117,160	09-12-2000	Bonutti	
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SHEET 3 OF 8		Examiner Gregory A. Anderson
		Attorney Docket No. KFX.003C2

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	59	6,245,082 B1	06-12-2001	Gellman et al.	
	60	6,280,474 B1	08-28-2001	Cassidy et al.	
	61	6,293,961 B2	09-25-2001	Schwartz et al.	
	62	6,296,659 B1	10-02-2001	Foerster	
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	64	6,319,271 B1	11-20-2001	Schwartz et al.	
	65	6,328,758 B1	12-11-2001	Tornier et al.	
	66	6,391,030 B1	05-21-2002	Wagner et al.	
	67	6,423,065 B2	07-23-2002	Ferree	
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	69	6,464,713 B2	10-15-2002	Bonutti	
	70	6,491,714 B1	12-10-2002	Bennett	
	71	6,514,274 B1	02-04-2003	Boucher et al.	
	72	6,518,200 B2	02-11-2003	Lin	
	73	6,520,980 B1	02-18-2003	Foerster	
	74	6,524,317 B1	02-25-2003	Ritchart et al.	
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	80	6,554,852 B1	04-29-2003	Oberlander	
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	Filing Date	09-26-2011
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	Art Unit	3773
	Examiner	Gregory A. Anderson
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	88	6,641,597 B2	11-04-2003	Burkhart et al.	
	89	6,652,561 B1	11-25-2003	Tran	
	90	6,660,008 B1	12-09-2003	Foerster et al.	
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	92	6,673,094 B1	01-06-2004	McDevitt et al.	
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	94	6,770,076 B2	08-03-2004	Foerster	
	95	6,780,198 B1	08-24-2004	Gregoire et al.	
	96	6,855,157 B2	02-15-2005	Foerster et al.	
	97	6,984,241 B2	01-10-2006	Lubbers et al.	
	98	6,986,781 B2	01-17-2006	Smith	
	99	7,001,411 B1	02-21-2006	Dean	
	100	7,041,120 B2	05-09-2006	Li et al.	
	101	7,056,333 B2	06-06-2006	Walshe	
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	115	2001/0008971 A1	07-19-2001	Schwartz et al.	
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	117	2001/0051815 A1	12-13-2001	Esplin	
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	127	2003/0088270 A1	05-08-2003	Lubbers et al.	
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	129	2003/0149448 A1	08-07-2003	Foerster et al.	
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	131	2003/0181925 A1	09-25-2003	Bain et al.	
	132	2003/0191498 A1	10-09-2003	Foerster et al.	
	133	2003/0195528 A1	10-16-2003	Ritchart	
	134	2003/0195563 A1	10-16-2003	Foerster	
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	136	2003/0204204 A1	10-30-2003	Bonutti	
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	139	2004/0024420 A1	02-05-2004	Lubbers et al.	
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	141	2004/0102779 A1	05-27-2004	Nesper et al.	
	142	2004/0093031 A1	05-13-2004	Burkhart et al.	
	143	2004/0116961 A1	06-17-2004	Nesper et al.	
	144	2004/0133238 A1	07-08-2004	Cerier	
	145	2004/0193217 A1	09-30-2004	Lubbers et al.	

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	Art Unit	3773
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SHEET 6 OF 8	Attorney Docket No.	KFX.003C2

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	146	2004/0225325 A1	11-11-2004	Bonutti	
	147	2004/0243178 A1	12-02-2004	Haut et al.	
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	154	2005/0240226 A1	10-27-2005	Foerster et al.	
	155	2005/0245932 A1	11-03-2005	Fanton et al.	
	156	2005/0283158 A1	12-22-2005	West	
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	158	2006/0067967 A1	03-30-2006	Bowman et al.	
	159	2006/0106423 A1	05-18-2006	Weisel et al.	
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	161	2006/0161159 A1	07-20-2006	Dreyfuss et al.	
	162	2006/0178702 A1	08-10-2006	Pierce et al.	
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	165	2006/0271105 A1	11-30-2006	Foerster et al.	
	166	2006/0293710 A1	12-28-2006	Foerster et al.	
	167	2007/0142835 A1	06-21-2007	Green et al.	
	168	2007/0142861 A1	06-21-2007	Burkhart	

FOREIGN PATENT DOCUMENTS						
Examiner Initials	Cite No.	Foreign Patent Document Country Code-Number-Kind Code Example: JP 1234567 A1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear	T ¹
	169	SU 1600713	10-23-1990	Don Med Inst.		
	170	WO 1999/052478 A1	10-21-1999	Axya Medical, Inc.		

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	171	WO 2001/054586 A1	08-02-2001	Shoulderon Ltd.		
	172	WO 2001/067962 A2	09-20-2001	Rosch		
	173	WO 2002/011630 A1	02-14-2002	The Cleveland Clinic Foundation		
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	178	WO 2005/112788 A2	12-01-2005	Arthrocare Corporation		
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	180	WO 2006/067548 A1	06-29-2006	Arthrex, Inc.		
	181	WO 2006/128092 A2	11-30-2006	Arthrocare Corporation		
	182	WO 2007/084714 A2	07-26-2007	Kim		

NON PATENT LITERATURE DOCUMENTS				
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ¹	
	183	Arthrex, Inc.'s Answer to Plaintiff KFX Medical Corp.'s complaint For Patent Infringement and Counterclaims, United States District Court , Southern District of California, September 23, 2011, Los Angeles, USA.		
	184	Complaint for Patent Infringement, dated August 1, 2011, KFX Medical Corporation v. Arthrex, Inc., (S.D.C.A.).		
	185	International Preliminary Report on Patentability dated January 25, 2007 for International Application No. PCT/US2005/019454.		
	186	International Search Report and Written Opinion of the International Searching Authority, dated September 6, 2006, for International Application No. PCT/US2005/019454.		
	187	LO et al., "Double-Row Arthroscopic Rotator Cuff Repair: Re-Establishing the Footprint of the Rotator Cuff, Arthroscopy: The Journal of Arthroscopic and Related Surgery, November, 2003, pgs. 1035-1042, Vol. 19, No. 9.		
	188	MAZZOCCA et al., Arthroscopic Single-Row Versus Double-Row Suture Anchor Rotator Cuff Repair," The American Journal of Sports Medicine, 2005, 33:1861.		
	189	MAZZOCCA et al., Arthroscopic Single versus Double Row Suture Anchor Rotator Cuff Repair, abstract of presentation made on June 25, 2004 at 2004 Annual Meeting of the American Orthopaedic Society for Sports Medicine in Quebec, Canada, publication date unknown.		
	190	MILLETT et al., Mattress double anchor footprint repair: a novel, arthroscopic rotator cuff repair technique. Arthroscopy: The Journal of Arthroscopic and Related Surgery, 20(8):875-879 (2004).		

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	Examiner	Gregory A. Anderson
SHEET 8 OF 8	Attorney Docket No.	KFX.003C2

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ¹
	191	PAULOS, M.D., Graftjacket Regenerative Tissue Matrix Rotator Cuff, date unknown, Wright Medical Technology, Inc.; Wright Cremascoli Ortho SA.	
	192	PCT International Preliminary Report on Patentability, dated May 22, 2009, for International Application No. PCT/US2007/083662.	
	193	PCT International Search Report and Written Opinion, dated August 8, 2008, for International Application No. PCT/US2007/083662.	
	194	PCT Invitation to Pay Additional Fees, dated May 13, 2008, for International Application No. PCT/US2007/083662.	
	195	ROBBE, M.D. et al., Knotless Suture-based Anchors, Operative Techniques in Sports Medicine, 2004, pgs. 221-224, Elsevier Inc.	
	196	SELDES, M.D., et al., Tissue Mend Arthroscopic Insertion of a Biologic Rotator Cuff Tissue Augment After Rotator Cuff Repair, Stryker, date unknown, pgs. 1-7.	
	197	Statement of Tate Scott, dated April 12, 2011, submitted in Re-Examination No. 90/011,430.	
	198	TissueMend Advanced Soft Tissue Repair Matrix, Stryker, date unknown.	
	199	TissueMend Soft Tissue Repair Matrix, Stryker, 2004, USA.	
	200	WALTRIP, "Rotator Cuff Repair A Biomechanical Comparison of Three Techniques", The American Journal of Sports Medicine, 2003, pgs. 493-497, No. 4.	
	201	YIAN, M.D., et al., Arthroscopic Repair of SLAP Lesions With a Bioknotless Suture Anchor, Arthroscopy: The Journal of Arthroscopic and Related Surgery, May-June 2004, pgs. 547-551, Vol. 20, No. 5. Arthroscopy Association of North America.	

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Examiner Signature	Date Considered
<p>*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</p>	

T¹ - Place a check mark in this area when an English language Translation is attached.

EXHIBIT 8



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,430	01/11/2011	7585311		1162

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 02/16/2011

Please find below and/or attached an Office communication concerning this application or proceeding.



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EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/011,430.

PATENT NO. 7585311.

ART UNIT 3993.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

Order Granting / Denying Request For Ex Parte Reexamination	Control No. 90/011,430	Patent Under Reexamination 7585311	
	Examiner JEANNE M. CLARK	Art Unit 3993	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 11 January 2011 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) ☒ PTO-892, b) ☐ PTO/SB/08, c) ☐ Other: _____

1. ☒ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. ☐ The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

- a) ☐ by Treasury check or,
b) ☐ by credit to Deposit Account No. _____, or
c) ☐ by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

cc:Requester (if third party requester)

U.S. Patent and Trademark Office
PTOL-471 (Rev. 08-06)

Office Action in *Ex Parte* Reexamination

Part of Paper No. -

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DECISION ON REQUEST

A substantial new question of patentability is raised for claims 1-3, 5-25, and 28-30 of U.S. Patent No. 7,585,311 (hereinafter "the '311 patent") by the request for reexamination and prior art cited therein for the reasons set forth below.

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

Service of Papers

After the filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 C.F.R. 1.248. See 37 C.F.R. 1.550(f).

Waiver of Right to File Patent Owner Statement

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third

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party requester, see 37 C.F.R. 1.550(f). The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

Amendment in Reexamination Proceedings

Patent owner is notified that amendments to the claims are NOT permitted because the '311 patent is expired. See MPEP 2250.

Submissions

In order to ensure full consideration of any affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to the first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is intended to be a final action, will be governed by the requirements of 37 C.F.R. 1.116, after final rejection and by 37 C.F.R. 41.33 after appeal, which will be strictly enforced.

Notification of Concurrent Proceedings

The patent owner is reminded of the continuing responsibility under 37 C.F.R. 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving

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the patent throughout the course of this reexamination proceeding. Likewise, if present, the third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Notification of Current Assignment of the Patent

The patent owner is requested to provide the current assignment information for the patent for which reexamination is requested. An assignment can be made of record in the file of a patent application, patent, or other patent proceeding (e.g., reexamination proceeding). This step is necessary to permit the assignee to "take action" in the application, patent, or other patent proceeding under the conditions set forth in 37 CFR 3.73 and MPEP § 324. Recordation of an assignment in the assignment records of the Office, however, does **not**, by itself, permit the assignee to take action in the application, patent, or other patent proceeding.

Brief Summary of the Prior Examination Proceeding

In application 11/143,007, which issued as the '311 patent, the examiner rejected claims 91-105, 112-115, 117, 118, 121, and 122 as being anticipated by U.S. Patent No. 5,891,168 to Thal ("Thal '168"); claims 106-111 and 120 as being obvious over Thal '168; claim 116 as being obvious over Thal '168 in view of U.S. Patent No. 5,569,306 to Thal ("Thal '306"); and claim 119 as being obvious over Thal '168 in view of U.S. Patent No. 5,224,946 to Hayhurst et al. See the Office action dated December 23, 2008. In particular, the examiner applied Thal '306 as a

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teaching of the anchor being inserted into the bone without being inserted through the soft tissue and referred to Figure 10. See page 6 of the December 23, 2008 Office action. The patent applicant responded by presenting amendments to claims 91, 95, 106, 111, 121, cancelling claims 122-142, adding new claims 143 and 144 and presenting arguments why the claimed invention is patentability distinguishable over the applied prior art. See the reply of February 17, 2009. Specifically, for claim 116, the patent applicant argued that:

“Claim 116 was rejected under 35 U.S.C. § 103(a) as being obvious over Thal I in view of Thal II (5,569,306). As discussed above, Thal I fails to teach or suggest all limitations of Claim 91. Thal II also fails to teach or suggest these limitations. The description of Figure 10 in Thal II makes clear that both spike member 121 and spike member 131 are "inserted through tissue 140" to arrive at the configuration depicted in Figure 11. Thal II, column 7, lines 60-61. Thus, Thal II fails to teach or suggest inserting a second anchor beyond the edge of the soft tissue such that it is not underneath the soft tissue or fixedly securing suture to a second anchor after its insertion. Accordingly, Applicants respectfully submit that dependent Claim 116 is not obvious over Thal I in view of Thal II.”

See page 8 of the February 17, 2009 reply. In response, the examiner issued a final rejection in which claims 120 and 121 were rejected as anticipated by Thal '306; claims 91-100, 102-105, 112-115, 117, 118, 143, and 144 were rejected as being rendered obvious over Thal '168 in view of U.S. Patent No. 5,634,926 to Jobe (“Jobe”); claims 106-111 as being obvious over Thal '168 in view of Jobe; claim 116 as being obvious over Thal '168 in view of Jobe and in further view of Thal '306; and claim 119 as being obvious over Thal '168 in view of Jobe and in further view of U.S. Patent No. 5,224,946 to Hayhurst et al. See the Office action mailed April 20, 2009, especially pages 2 and 7. In reply, the patent applicant submitted further amendments to claims 91, 102, 106, 111, and 120, cancelled claims 101 and 121, and presented arguments why the claimed invention of claims 91 and 120 is patentability distinguishable over the applied prior art. See the reply of May 8, 2009. Specifically, the patentability of claim 116 was not argued

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separately, like in the February 17, 2009 reply. Subsequently, patent applicant gave authorization to cancel independent claim 120, which left claim 91 as the only pending independent claim. On June 29, 2009, the examiner allowed claims 91-100, 102-119, 143, and 144, cancelled claim 120 via examiner's amendment, and wrote the following reasons for allowance:

"Thai 5,569,306 discloses a method of attaching soft tissue to bone comprising: inserting a first anchor 26 into bone 28, wherein the first anchor is positioned underneath the soft tissue 30; passing a first length of suture 42 from said first anchor over the soft tissue; inserting a second anchor 24 into bone, wherein the second anchor is positioned laterally to the soft tissue; and fixedly securing the first length of suture to the second anchor without tying any knots (Fig. 2). Thai further discloses inserting a third anchor 22 into bone. Jobe 5,634,926 discloses anchors being positioned beyond an edge of the soft tissue such that it is not underneath the soft tissue (Fig. 9, Col. 8 ll.34-37). However, neither Thai nor Jobe disclose after inserting the second anchor, tensioning the first length of suture to compress an area of tissue to bone between the edge of the soft tissue and the first anchor. The prior art of record nor the prior art at large, alone or in combination, cannot remedy the deficiencies of the Thai and Jobe references and thus the claims are allowed."

Application claims 91-100, 102-119, 143, and 144 issued as patent claims 1-30, respectively, in the '311 patent.

A Substantial New Question of Patentability Analysis

A third party requested reexamination of claims 1-25 and 27-30 of U.S. Patent No. 7,585,311 based upon the following proposed rejections supported by alleged substantial new questions of patentability (SNQs):

1. Claims 1-4, 8, 22-23, 25, and 27-30 of the '311 Patent are anticipated by U.S. Pat. No. 5,569,306 to Thal ("Thal '306").
2. Claims 1-3, 8, 22-25, and 28-30 of the '311 Patent are obvious in view of U.S. Pat. No. 6,585,730 to Foerster ("Foerster") in view of Thal '306.

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3. Claims 5-8, 11-12, and 14-15 of the '311 Patent are obvious based on Thal '306 in view of U.S. Pat. No. 5,891,168 to Thal ("Thal '168").
4. Claims 5-8, 11-12, and 14-15 of the '311 Patent are obvious based on Foerster in view of Thal '306, and further in view of Thal '168.
5. Claims 8-10 and 24 of the '311 Patent are obvious based on Thal '306 in view of U.S. Pat. App. Pub. No. 2003/0120309 to Colleran ("Colleran").
6. Claims 8-10 and 24 of the '311 Patent are obvious based on Foerster in view of Thal '306, and further in view of Colleran.
7. Claim 21 of the '311 Patent is obvious based on Thal '306 in view of U.S. Pat. No. 5,443,482 to Stone ("Stone").
8. Claim 21 is obvious based on Foerster in view of Thal '306, and further in view of Stone.
9. Claims 13 and 16-20 of the '311 Patent are obvious based on Thal '306 in view of Thal '168 and further in view of U.S. Pat. No. 4,872,840 to Bori ("Bori") and/or "Suturing techniques for periodontal plastic surgery," by Regan L. Moore & Margaret Hill, *Periodontology* 2000, vol. 11, 1996 ("Moore").
10. Claims 13 and 16-20 of the '311 Patent are obvious based on Foerster in view of Thal '306 and Thal '168 and further in view Bori and/or Moore.

A discussion of the prior art references that allegedly form a basis for a SNQ now follows:

A Substantial New Question of Patentability Analysis

A substantial new question of patentability (SNQ) is a requirement in order for a request for a reexamination proceeding to be granted. As stated in MPEP 2242:

A "substantial new question of patentability" is not raised by prior art presented in a reexamination request if the Office has previously considered (in an earlier examination of the patent) the same question of patentability as to a patent claim favorable to the patent owner based on the same prior art patents or printed publications. *In re Recreative Technologies*, 83 F.3d 1394, 38 USPQ2d 1776 (Fed. Cir. 1996).

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1. Applying “Old Art” as the Basis for a New Request for Reexamination

The Uchida reference, which is one of the basis for the substantial new question of patentability, had been considered in a previous examination proceeding. Accordingly, the reference is considered “old art” for the determination of whether a new substantial question of patentability exist in the instant request for reexamination.

35 U.S.C. 303(a) provides for *ex parte* reexamination (emphasis added):

“Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Director will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications....**The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.**”

The reexamination statute makes it clear that a SNQ can be raised by patents and printed publications “previously cited by or to the Office or considered by the Office.” This provision was added for both *ex parte* and *inter partes* reexamination via the Patent and Trademark Office Authorization Act of 2002.¹ Therefore, for any reexamination ordered on or after November 2, 2002, the effective date of the statutory revision, reliance on previously cited/considered art, i.e., “old art,” does not necessarily preclude the existence of a substantial new question of patentability (SNQ) that is based exclusively on that old art. Rather, determinations on whether a SNQ exists in such an instance shall be based upon a fact-specific inquiry done on a case-by-case basis.

¹ See § 13105, part (a), of the Patent and Trademark Office Authorization Act of 2002, enacted in Public Law 107-273, 21st Century Department of Justice Appropriations Authorization Act, 116 Stat. 1758 (2002).

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2. The Determination of a SNQ

Looking to the legislative history for the original reexamination statute², Congress stated:

“Section I provides for a system of administrative reexamination of patents within the patent office. This new procedure will permit any party to petition the patent office to review the efficacy of a patent, subsequent to its issuance, on the basis of **new information about preexisting technology which may have escaped review at the time of the initial examination of the patent application.** H.R. Rep. No. 96-1307, 96th Cong., 2d Sess. 3 (1980), reprinted in 1980 U.S.C.C.A.N. 6460, 6461, 6462.”
 [Emphasis added]

Reexamination is limited to review of new information about preexisting technology which may have escaped review at the time of the initial examination of the patent application. It was not designed for harassment of a patent owner by review of old information about preexisting technology, even if a third party feels the Office’s conclusion based on that old information was erroneous. The reexamination legislative history nowhere provides for review of such old information, each time a court clarifies or re-interprets a standard or a point of law that affects the patentability determination. If it did, the reexamination process would be unwieldy, because case law is constantly evolving.

Looking further at the legislative history for the original reexamination statute, Congress stated:

“Subsection 303(a) requires the Commissioner to determine if a “substantial new question of patentability” is raised in connection with any claims of the patent against which a patent or printed publication is cited and to order reexamination upon a positive determination.... This ‘substantial new question’ requirement would protect patentees from having to respond to, or participate in unjustified reexaminations. Further, **it would act to bar reconsideration of any argument already decided by the Office,** whether during the original examination or an earlier reexamination.” Id. at 7, reprinted in 1980 U.S.C.C.A.N. at 6465, 6466. [Emphasis added]

² Public Law 96-517, enacted on December 12, 1980.

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For example, reconsideration of an argument that the examiner improperly applied, or did not apply, either 35 U.S.C. 102 or 35 U.S.C. 103 in a rejection over a reference or combination of references that was identical to the reference or reference combination previously applied by the examiner, whether during the original examination or an earlier reexamination, was barred.

Similarly, the reexamination statute bars reconsideration of any “argument” as to obviousness of old art that has already been decided by the Office, despite the fact that a standard for patentability may have been clarified or modified by virtue of a post-patent court decision.

The examiner has thoroughly reviewed the instant request for reexamination and has determined that the request does not present any new information or technical teaching in the Thal ‘305 reference that was not present in the prior examination for the reasons stated below. In addition, the request does not specifically advance any SNQs based on references other than Thal ‘305 and Foerster (see pages 17-22 of the request). Specifically, page 22 of the request states that the combination of Colleran, Stone, Moore, and Bori with the teachings of Thal ‘305, Thal ‘168, and/or Foerster is what raises the SNQs. In other words, the request fails to identify any new information or technical teaching with regard to the Thal ‘168, Colleran, Stone, Moore, and Bori references. Therefore, only the Thal ‘305 and Foerster references will be addressed in the SNQ analysis.

Thal ‘306

It is NOT agreed that Thal ‘306 raises a SNQ with respect to claims 1-25 and 27-30 in the ‘311 patent.

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As stated above in the summary of the prior examination, Thal '306 was applied to the claims under both anticipation and obviousness in the prior examination. In the request for reexamination, the requester states that Thal '305 provides a SNQ because it teaches an anchor member 131 that can be inserted "... directly into hollow anchoring sleeve 144," which is located in column 7 lines 60-63 of Thal '306. Requester alleges that the examiner overlooked or failed to appreciate this teaching in the prior examination. Therefore, the requester asserts that the teachings of Thal '305 are given a "new light." See pages 17-20 of the request.

First, it is noted that the limitation of the second anchor being inserted directly into the bone without passing through the soft tissue, which the requester states is the basis for the new light, is found in dependent patent claim 25 and not in patent claim 1. As stated above, reconsideration of an argument that the examiner improperly applied a reference that was identical to the reference previously applied by the examiner, during the original, is barred by statute. In this case, the record clearly shows that Thal '306 was applied under both anticipation and obviousness to the claims in the prior examination. In addition, the teachings of Figure 10 was specifically applied by the examiner and discussed by the patent applicant in the prior examination. There is no evidence on the record that the examiner did not fully understand and appreciate the embodiment as shown in Figure 10 in Thal '305. Requester accuses the patent applicant's arguments in the reply of February 17, 2009 as "misleading" the examiner. However, the record shows that the examiner not only maintained the rejection of claim 116 but further applied Thal '305 to independent claims 120 and 121 in response to the February 17, 2009 arguments. See the Office action dated April 20, 2009. Therefore, the record does not support Requester's position that the examiner acquiesced to patent applicant's argument regarding claim

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116. Requester's discussion on pages 17-20 of the request fails to completely and accurately summarize the prior examination history.

More importantly, the reasons for allowance in the prior examination specifically mentioned that the prior art of record, which included Thal '306, fails to teach the method step of "... after inserting the second anchor, tensioning the first length of suture to compress an area of tissue to bone between the edge of the soft tissue and the first anchor." The request fails to show how the teachings of Thal '306 provide any new technical teaching or information in regard to the missing limitation identified in the reasons for allowance. Instead, as discussed above, the requester alleges that the examiner failed to completely understand the teachings of Thal '306 in regard to the second anchor being inserted into the bone without passing through the soft tissue. No discussion is present for how Thal '306 is viewed in a new light in regard to the reasons for allowance.

In summary, the record is clear that Thal '306 was applied under both anticipation and obviousness in the prior examination. The request is alleging that the examiner erred in its application of Thal '306 and that reexamination should be granted on this basis. The patentability question raised in the request is based on the limitation of the second anchor being directly inserted into the bone without passing through the soft tissue, which was an issue that was clearly considered and answered in the prior examination. Therefore, for the reasons discussed above, the discussion in the request fails to bring new light to the teachings of Thal '306 for patent claims 1-25 and 27-30. Reconsideration of the same patentability question is barred by statute. Accordingly, the teachings of Thal '306 as presented in the request cannot be a

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basis for granting reexamination and proposed rejections 1, 3, 5, 7, and 9 are not supported by any SNQ.

Foerster

It is agreed that Foerster raises a SNQ with respect to claims 1-3, 5-25, and 28-30 in the '311 patent. As stated above, the third party requester only relies on Thal '306 or Foerster to raise a SNQ to support the ordering of reexamination. Accordingly, under this fact-specific inquiry, a SNQ only exists if Foerster provides new technical teaching or information to the claimed invention.

Looking at the request, e.g., pages 20-22 allege to set forth a substantial new question of patentability for Foerster to support the obviousness proposed rejections which apply Foerster in combination with various references. The request states Foerster has teachings relevant to the method step of tensioning the suture to compress an area of tissue to bone after the insertion of the second anchor 235, which is a limitation added by the May 8, 2009 amendment and identified as the reasons for allowance in the prior examination. See page 21 of the request. This teaching of Foerster would be important to a reasonable examiner in deciding the patentability of claims 1-3, 5-25, and 28-30 in the '311 patent. Foerster does present a new, non-cumulative technological teaching over the teachings in the prior examination.

Therefore, the request establishes a substantial new question of patentability that would support proposed rejections 2, 4, 6, 8, and 10. Accordingly, it is agreed that Foerster raises a SNQ with respect to claims 1-3, 5-25, and 28-30 in the '311 patent.

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Conclusion

The request has established a substantial new question of patentability for claims 1-3, 5-25, and 28-30.

Since requester did not request reexamination of claim 26 and did not assert the existence of a substantial new question of patentability (SNQ) for the claim, claim 26 was not considered in deciding the request for reexamination.

MPEP § 2658 IV B cites in-part:

“The Office’s determination in both the order for reexamination and the examination stage of the reexamination will generally be limited solely to a review of the “live” claims (i.e., existing claims not held invalid by a final decision, after all appeals) for which reexamination has been requested. If the requester was interested in having all of the claims reexamined, requester had the opportunity to include them in its request for reexamination. However, if the requester chose not to do so, those claim(s) for which reexamination was not requested will generally not be reexamined by the Office. It is further noted that 35 U.S.C. 311(b)(2) requires that a requester “set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.” If the requester fails to apply the art to certain claims, then the requester is not statutorily entitled to reexamination of such claims. If a request fails to set forth the pertinency and manner of applying the cited art to any claim for which reexamination is requested as required by 37 CFR 1.915(b), that claim will generally not be reexamined.”

All correspondence relating to this *ex parte* reexamination proceeding should be directed:

By EFS: Registered users may submit via the electronic filing system EFS-Web, at
<https://portal.uspto.gov/authenticate/authenticateuserlocalepf.html>.

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Alexandria, VA 22314

For EFS-Web transmissions, 37 CFR 1.8(a)(1)(i) (C) and (ii) states that correspondence (except for a request for reexamination and a corrected or replacement request for reexamination) will be considered timely filed if (a) it is transmitted via the Office's electronic filing system in accordance with 37 CFR 1.6(a)(4), and (b) includes a certificate of transmission for each piece of correspondence stating the date of transmission, which is prior to the expiration of the set period of time in the Office action.

Any inquiry concerning this communication or earlier communications from the Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.

Signed:

_____/Jeanne M Clark/____

Jeanne M. Clark
CRU Examiner
GAU 3993
(571) 272-7714

Conferee: DR

Conferee: AK